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6. Vendor and Purchaser (§ 130 (9)*)—Marketable Title—Easement.—An easement of a telephone company to maintain its line over the land visible at the time of making the contract does not render the title unmarketable, as in such case the purchaser is presumed to have taken its existence into consideration in fixing upon the amount of the purchase money.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 496.]

7. Vendor and Purchaser (§ 130 (9)*)—Marketable Title—Easement.—An easement of a telephone company to maintain its line over the land does not render the title unmarketable, where it enhances the market value of the land.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 496.]

8. Contracts (§ 239*)—Modification of Contract—Parol Agreement.—The common-law rule that an executory contract under seal can be modified or abrogated only by an instrument of equal dignity has not been relaxed at law.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. § 1124.* 3 Va.-W. Va. Enc. Dig. 415, 440; 7 Va. Law Reg. 204.]

9. Vendor and Purchaser (§ 82*)—Rescission of Contract—Unexecuted Agreement.—The obligation of a contract under seal, for the sale of land, cannot be released at law by an unexecuted parol agreement to cancel it.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 138, 139.* 3 Va.-W. Va. Enc. Dig. 415, 440; 7 Va. Law Reg. 204.]

Error to Hastings Court of Petersburg.

Action by Irvin Owings against Walter Sachs and another. Judgment for plaintiff, and defendants bring error. Reversed. *Lassiter & Drewry*, of Petersburg, for plaintiffs in error. *Hamilton & Mann*, of Petersburg, for defendant in error.

ATLANTIC COAST LINE R. CO. *v.* TREDWAY'S ADM'X.

June 14, 1917. Rehearing Denied.

[93 S. E. 560.]

1. Master and Servant (§ 88 (6)*)—Railway Employee's Injury—Federal Employers' Liability Act—"Employee."—An interlocker signal operator at crossing of two railroads hired by S. Railroad under agreement and in consideration of privilege of crossing defendant railroad, injured while attending to signal lights used only by defendant railway, was the latter's "employee," within the meaning of federal

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Employers' Liability Act, April 22, 1908, c. 149, 35 Stat. 65 (U. S. Comp. St. 1916, §§ 8657-8665); the word "employee" not being defined by the act, but referring to the relation of master and servant, the usual elements of which are selection and engagement of the servant, payment of wages, power of dismissal, and power of control, although none of such elements are absolutely determinative and where the duties of the master are nonassignable, as in the present case, he cannot escape liability by transferring control of the servant to another person.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 662.]

For other definitions, see Words and Phrases, First and Second Series, Employee.]

2. Appeal and Error (§ 930 (1)*)—Consideration of Evidence.—Upon assignment of error the evidence must be considered as if on demurrer thereto.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 576.]

3. Master and Servant (§ 278 (18)*)—Railway Employee's Injury—Sufficiency of Evidence—Negligence.—Evidence held sufficient to show that an interlocker signal operator was injured by defendant railway company's negligence in running a train past a stop signal.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 725.]

Error to Circuit Court, Greensville County.

Action by Leath E. Tredway, administratrix of Edward C. Tredway, against Atlantic Coast Line Railroad Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Wm. B. McIlwaine, of Petersburg, for plaintiff in error.

Buford & Peterson, of Lawrenceville, and *Southall & Turner*, of Emporia, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.